

REMARKS

Claims 459-469 and 471-473 remain in this application. Claim 470 has been cancelled.

In order to expedite prosecution of the present application, claim 459 has been amended to recite a system for processing the sale and purchase of items, comprising: (a) a storage device; and (b) a processor connected to the storage device, the storage device storing a program for controlling the processor; and the processor operative with the program to: (i) receive sell offers from a seller and bargain offers from a buyer, including conditions for purchase and a payment identifier, thereby defining said bargain offer; (ii) carry out a bargaining process with said buyer to arrive at a price for at least one of said items that is agreed on by said buyer and said seller; (iii) arrange for the purchase of said at least one item by said buyer from said seller at said price; and (iv) provide a graphically displayed meter, wherein said meter graphically depicts a probability for system acceptance of buyer's offer for purchase of the product. Present claims 460-469 and 471-473 has been amended to correct certain informalities which are discussed hereinafter. The amendments to the claims are clearly supported by the original specification; particularly at original claims 81, 192, 303, and 414. Consequently, no new matter has been added.

Applicant's invention provides an electronic bargaining system that enables buyers to bargain with the system in order to negotiate an optimum bargain price and that enables sellers to sell or list their products by bargaining with the system to negotiate the best-offered price. The system permits purchase and sale of goods to be transacted at a bargained for price that represents the best bargain obtained by the parties. A bargained

for price for transactions consummated by the electronic bargaining system is reached by the parties in a highly reliable manner. Principal attributes of that bargained for price are those captured by the characterization: “Our Best Bargain, Your Best Bargain”.

Claim Objections

Claim 463 was objected to because of the following informalities: improper word.

The Examiner has indicated that claim 463 states “transmit a notification to the buyer, **which** notification indicates...” (emphasis added). The Examiner has indicated that claim 463 should state “transmit a notification to the buyer, **said** notification indicates...”. In order to overcome this objection, claim 463 has been amended to replace the word “which” with the word “said”.

Accordingly, reconsideration of the objection to claim 463 because of the use of an improper word is respectfully requested.

Claim Rejections – 35 USC § 112

Claims 460-461, 467-468, and 471 were rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 460-461, 467-468, and 471, the Examiner has indicated that these claims utilize the phrase “and/or” which fails to distinctly claim the subject matter. The Examiner has indicated that all occurrences of “and/or” in the cited claims were interpreted as “or” by the Examiner for purposes of application of prior art. In order to

overcome this rejection, each occurrence of the phrase “and/or” has been replaced with the phrase “or”.

Regarding claim 468, the Examiner has indicated that this claim utilizes the phrase “wild card discounts” which fails to distinctly claim the subject matter. The Examiner has indicated that he has read such claim limitation as merely “discounts,” as the Examiner was unable to find a definitive definition of the phrase “wild card discounts.” In order to overcome this rejection, each occurrence of the phrase “wild card discounts” has been replaced with the phrase “discounts”.

Accordingly, reconsideration of the rejection of claims 460-461, 467-468, and 471 under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention is respectfully requested.

Claim Rejections – 35 USC § 103

Claims 459-469 and 471-473 were rejected under 35 USC 103(a) as being unpatentable over Walker (US Patent 5,794,207) in view of Miller (Miller, Michael. *The Complete Idiot’s Guide to Online Auctions*. Que. 1999. pp. 7-43) and Official Notice.

Walker discloses a method and apparatus for effectuating bilateral buyer-driven commerce. The present invention allows prospective buyers of goods and services to communicate a binding purchase offer globally to potential sellers, for sellers conveniently to search for relevant buyer purchase offers, and for sellers potentially to bind a buyer to a contract based on the buyer's purchase offer. In a preferred embodiment, the apparatus of the present invention includes a controller which receives binding

purchase offers from prospective buyers. The controller makes purchase offers available globally to potential sellers. Potential sellers then have the option to accept a purchase offer and thus bind the corresponding buyer to a contract. The method and apparatus of the present invention have applications on the Internet as well as conventional communications systems such as voice telephony.

Regarding present claim 459, the Examiner has admitted that Walker does not teach a system in which the graphic display is adapted to graphically depict a probability for system acceptance of buyer's offer for purchase of the product. The Examiner has stated that Miller discloses a system (online auction system) further comprising a graphic display adapted to graphically depict a probability for system acceptance of buyer's offer (bid) for purchase of the product (such as whether a buyer's offer is the current winning bid or, at least, satisfies a reserve price). (see pp. 20-22; 28-30). The Examiner has stated that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Walker by incorporating a graphical display, as disclosed by Miller, allowing for a buyer to monitor their status within the sale process and the probability of the sale proceeding to completion.

In view of the amendment to claim 459, it is submitted that Walker in view of Miller does not teach or suggest a graphically displayed meter, wherein the meter graphically depicts a probability for system acceptance of buyer's offer for purchase of the product. A meter is defined as: "1. Any of various devices designed to measure time, distance, speed, or intensity or indicate and record or regulate the amount or volume, as of the flow of a gas or an electric current. 2. A postage meter. 3. A parking meter." See meter. Dictionary.com. *The American Heritage® Dictionary of the English Language*,

Fourth Edition. Houghton Mifflin Company, 2004.

<http://dictionary.reference.com/browse/meter> (accessed: May 22, 2007).

Clearly, Walker in view of Miller does not teach or suggest a graphically displayed meter of any type. By way of contrast, the Examiner has stated that Miller discloses a system further comprising a graphic display adapted to graphically depict a probability for system acceptance of buyer's offer (bid) for purchase of the product. The Examiner provides the following example as support: (such as whether a buyer's offer is the current winning bid or, at least, satisfies a reserve price). However, even assuming that the system disclosed by Walker in view of Miller in fact depicts such information, this information is still not depicted by a meter of any type and does not provide any sort of measurement or quantify the probability for system acceptance of buyer's offer for purchase of the product. A meter by definition is known to provide a specific measurement or amount of something.

The advantages of the graphically depicted meter of present claim 459 are many. First, the user of the system is provided with specific and reliable information that may assist him in the consummation of his purchase. Further, the meter adds to the thrill and excitement of using the system for purchasing goods or services because of the graphically displayed feedback that the meter provides. The graphically displayed meter adds a level of entertainment and at the same time provides important information in a format which the user can utilize effectively during his use of the system and while placing offers. Unlike Walker in view of Miller, the user of present claim 459 is provided with a graphically displayed meter that displays a measurement of the probability for system acceptance of buyer's offer for purchase of the product.

Significantly, it is submitted that Walker in view of Miller does not disclose or suggest a system for processing the sale and purchase of items, comprising, *inter alia*, a processor that provides a graphically displayed meter, wherein the meter graphically depicts a probability for system acceptance of buyer's offer for purchase of the product. Therefore, in view of the amendment to present claim 459, it is submitted that present claim 459 patentably defines over Walker in view of Miller.

Claims 460-469 and 471-473 depend from currently amended claim 459, which is submitted to be patentable for the reasons set forth hereinabove. Inasmuch as claims 460-469 and 471-473 contain all the limitations of independent amended claim 459, it is submitted that these dependent claims are also patentable over Walker in view of Miller.


The Examiner has taken Official Notice several times throughout the present Office Action. In accordance with MPEP § 2144.03 applicant hereby traverses each Official Notice. Regarding the Official Notices at pages 6 and 8 of the present Office Action, applicant submits that the noticed facts are not considered to be common knowledge or well-known in the art.

Accordingly, reconsideration of the rejection of claims 459-469 and 471-473 under 35 USC 103(a) as being unpatentable over Walker in view of Miller is respectfully requested.

Conclusion

In view of the amendments to the claims and the remarks set forth above, it is respectfully submitted that the present application is in allowable condition. Entry of the present Amendment and the allowance of present claims 459-469 and 471-473 is earnestly solicited.

Respectfully submitted,
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